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# See No Evil: Applying a Labor Lens to Prostitute Organizing

Monica R. Moukalif\*

## I. INTRODUCTION

Prostitutes are organizing and advocating in ways that could be beneficial to all marginalized workers. Yet mainstream labor advocates and academics remain blind to their efforts. Perhaps labor academics justify their inattention to sex workers by reasoning that the work is of debatable value to society because it is illegal or criminal. However, such justifications fall apart if one examines other similarly situated marginalized labor groups, such as undocumented immigrant labor. By definition, society also estranges and devalues these similarly marginalized groups. Yet current organizing literature shows a real appreciation for and interest in the organizing that these marginalized workers have done. In particular, more and more discourse is emerging around immigrant day labor and immigrant domestic labor organizing efforts, especially that of largely undocumented workers.

This Note constructs a margins-oriented labor lens and then applies it to sex labor discourse. The goal is not to tell workers what they should do. Instead, the aim is to fill an enormous gap in legal and academic discourse about organizing at the margins. At the same time, this Note celebrates the hard work that marginalized workers have done to make this country (and the world) safer for large groups of women, transsexual/transgender, gay, and other minority workers.

Most of the legal and academic writing about prostitution relates to the debate surrounding decriminalization versus legalization of sex work and feminist debates about whether or not sex work should be considered valid work at all. Rather than rehashing those arguments, this Note begins by answering the second question in the affirmative and taking the position that people who perform erotic or sexual service in exchange for payment

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are workers in the truest sense of the word. By viewing them through the same labor lens as other workers, as opposed to concentrating on legalistic arguments about the legalization or decriminalization of prostitution, this Note highlights the striking similarities between sex labor organizing efforts and those of other marginalized workers.

In this way, we can move beyond the legalistic questions of what to do about the industry by using a labor-organizing lens to focus on sex workers themselves. Instead of asking, "What should *we*, or our society, do about *them*?" the questions become "What are they doing for themselves?" "How is that similar to or different from what other workers are doing?" and "What might they, we, and those other workers learn from that work?"

One obvious difference between day labor and domestic labor on one hand and sex labor on the other is that some forms of sex labor are criminal.<sup>1</sup> Thus, while an undocumented immigrant worker may perform her or his labor illegally, the work itself is not illegal or criminal. But should this make a difference in how a worker's *organizing* efforts are valued? Most organizers and labor activists would agree that it is incorrect and possibly even immoral to base the energy put into organizing and advocacy on how much society values the work or worker.

Sex workers have much to offer the budding discourse on alternative strategies to gain a collective voice in labor organizing. By ignoring this voice, we not only lose an important base of solidarity across lines of workers (which may have dire consequences for these workers) but we may impoverish labor organizing generally. In applying a labor lens to prostitutional organizing, this Note will show that there are more similarities than differences between the marginalized immigrant groups that are currently much-discussed in academic writing and sex labor organizing that is largely ignored. It will also shed light on what sex labor organizing has to offer organizing at the margins, generally.

## II. LOCATING THE APPROPRIATE LENS: MODELS OF ORGANIZING

Sex labor is a broad and complicated industry composed of a number of trades. Some sex labor trades are completely legal, while other sex labor trades become criminal acts once performed.<sup>2</sup> For example, exotic dancing, erotic videos, and phone sex are legal, but commercial sex work is

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1. For example, in California, "prostitution includes any lewd act between persons for money or other consideration." It is not necessary that the "lewd act" be sexual intercourse. The only requirement is "physical contact between two people, in which one person touches the genitals, buttocks or (female) breasts of the other person, for the purpose of sexual gratification." CAL. PENAL CODE § 647(b) (Deering 2007).

2. *Id.* See also Katya Komisaruk, Just Cause Law Collective: Explanation of Laws (2002), <http://www.stjamesinfirmar.org/Uploads/Explanation-Of-Laws.pdf> (last visited Mar. 27, 2009).

criminalized in a number of ways in almost all jurisdictions in the United States.<sup>3</sup>

Even absent criminal law complications, there are vast differences among trades within the sex work industry. Consider, for example, organized dancing in direct contrast to organized prostitution. Exotic dancing is generally legal and is performed at a specific worksite (club) for a set hourly duration. Exotic dancers who work at a club or specific worksite arguably have a single employer — the club/site owner.<sup>4</sup> Prostitution, however, is generally illegal, performed on a per client basis, and not necessarily at a single location for a set duration. Prostitutes are arguably self-employed.<sup>5</sup>

Not surprisingly, organizing varies somewhat depending on the sex labor trade. For dancers and some other sex labor trades people, the traditional U.S. model of union organizing may make sense.<sup>6</sup> However, for others in the field the traditional union model is either totally unworkable or unreachable. This problem is not unique to sex labor. Other groups of marginalized workers experience many of the same organizing difficulties as sex laborers.

A. TRADITIONAL UNION ORGANIZING IN THE U.S.:  
THE NATIONAL LABOR RELATIONS ACT

To set the stage for a discussion on organizing efforts of marginalized labor, it is necessary to examine the traditional union organizing model that exists in the United States. The National Labor Relations Act (“NLRA” or “the Act”) governs workplace organizing in the United States. NLRA section 7, perhaps the most crucial provision of the Act, protects employees’ rights to organize and to join a union.<sup>7</sup> This section does not require any kind of formal organization or union membership for protection.<sup>8</sup> All it requires is that workers act in concert. For example, in *NLRB v. Washington*

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3. BEST PRACTICES POLICY PROJECT STEERING COMMITTEE, REPORT TO THE DIVISION FOR THE ADVANCEMENT OF WOMEN 2 (2005), <http://www.bestpracticespolicy.org/reports.html> (last visited Mar. 27, 2009). There is a limited formal exception of certain licenses granted to brothel houses in the state of Nevada. *Id.*

4. See generally Sarah Chun, Note, *An Uncommon Alliance: Finding Empowerment for Exotic Dancers Through Labor Unions*, 10 HASTINGS WOMEN’S L.J. 231 (1999).

5. While I acknowledge the possibility that prostitutes may be employees of their pimp or madam (assuming they turn all or part of their wages over to her/him), that question is beyond the scope of this Note.

6. See Chun, *supra* note 4.

7. 29 U.S.C. §157 (1994). (“Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activity for the purpose of collective bargaining or other mutual aid or protection . . .”). See also Peggie R. Smith, *Organizing the Unorganizable: Private Paid Household Workers and Approaches to Employee Representation*, 79 N.C. L. REV. 45, 58 (2000).

8. Alan Hyde, *New Institutions for Worker Representation in the United States: Theoretical Issues*, 50 N.Y.L. SCH. L. REV. 385, 405 (2005-2006).

*Aluminum*, a group of workers walked off the job because the shop's heaters were not functioning, and the workers felt that it was too cold to work.<sup>9</sup> Even though these workers were neither in a union nor seeking union representation, the Act protected their activity because it was concerted activity.

When Congress enacted the NLRA, it explicitly recognized the inequality of bargaining power between employees and employers and the need for employees to be able to join forces and act collectively to correct the inequality.<sup>10</sup> As conceived, the Act was geared toward trade workers who labored in a common shop and recognized collective action, rather than individual action, as necessary for workers to have an effective voice in the workplace.<sup>11</sup>

#### B. LIMITATIONS WITHIN THE ACT

Typically, Union membership results in higher wages and better working conditions for workers.<sup>12</sup> For example, twenty-six percent more union workers are covered by healthcare benefits than their non-union counterparts.<sup>13</sup> Yet, union density in the United States has fallen to 12.5 percent from thirty-five percent in 1953.<sup>14</sup> One explanation for this drop-off is that many workers who try to organize are spied on, harassed, threatened with deportation, or otherwise victimized for attempting to exercise their right to freedom of association.<sup>15</sup>

Limitations in the Act itself also contribute to this decline. The Act defines "employee" broadly, extending to almost any person who falls within the common meaning of that term.<sup>16</sup> The scope of this definition has even been read broadly enough to extend formalistic (albeit often ineffective) protection to undocumented workers working in the United States.<sup>17</sup> Even so — whether by its terms, interpretation, or labor policy — the Act does

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9. 370 U.S. 9, 11-12 (1962).

10. Smith, *supra* note 7, at 109.

11. *Id.* at 62-63.

12. Rebecca Smith, *Human Rights at Home: Human Rights as an Organizing and Legal Tool in Low-Wage Worker Communities*, 3 STAN. J. C.R. & C.L. 285, 294 (2007).

13. *Id.* at 292.

14. *Id.*

15. *Id.* The list of potential causes is actually quite lengthy. One might also include the amended NLRA's strict limits on secondary boycotts, its allowance of "permanent replacement workers," the growth of sophisticated anti-union election tactics, underfunded/understaffed enforcement mechanisms, and lack of effective remedies for unfair labor practices.

16. Smith, *supra* note 7, at 58. See, e.g., *NLRB v. Town & Country Elec., Inc.*, 516 U.S. 85, 90 (1995) ("The phrasing of the Act seems to reiterate the breadth of the ordinary dictionary definition for it says '[t]he term 'employee' shall include any employee.'" (quoting 29 U.S.C. § 152(3) (1988))).

17. See *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002). Note, however, that while the undocumented worker's activity was protected he was not afforded any real remedy.

not reach all workers.<sup>18</sup> Notably, the Act also contains a list of explicit exceptions, including independent contractors and domestic workers.<sup>19</sup>

### C. WORKING GIRLS LEFT OUT IN THE COLD

Even if prostitutes' labor is decriminalized, they are unlikely to come within the protection of the Act because they do not fit into the model of "employee." Consider again the contrast between dancers and prostitutes. In some jurisdictions, exotic dancers have proved their employee status and claimed their rights to legal redress in employment and wage and hour issues.<sup>20</sup> They have done so by successfully using the Federal Labor Standards Act's "economic realities" test to bring their work within the definition of "employee" — arguing their financial livelihood depends directly upon their employers, who usually own their workplace.<sup>21</sup>

Unfortunately, this tactic is not likely to be effective in the area of prostitution because of the basic difference in the employee-employer relationship.<sup>22</sup> Prostitutes' "employers" are their clients, and the client alone determines the length and limits of employment.<sup>23</sup> Thus, even though a common sense view of employment that embodies a pay-for-work type of standard might include prostitution, the NLRA's statutory definition of "employees" does not.<sup>24</sup> Prostitutes, therefore, have looked outside of traditional labor law to organize around the classic labor issues of safety, wages, hours, benefits, and other terms and conditions of employment.

## III. A DIFFERENT VIEW: MARGINS-ORGANIZING

Caught between fears of reprisals or simply excluded from the protection of the Act, prostitutes and other marginalized workers have had to find solidarity without the official and legal sanctions of U.S. labor laws. Many workers have turned to other modes of self-organization to gain justice on the job. These workers have developed several alternative strategies and organizing models to advocate at the margins.<sup>25</sup>

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18. Smith, *supra* note 7, at 59.

19. 29 U.S.C. § 152(3) (2000) defines employee to include any employee except:

[A]ny individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act.

20. See generally Chun, *supra* note 4. See also Oliver J. McKinstry, Note, *We'd Better Treat Them Right: A Proposal for Occupational Cooperative Bargaining Associations for Sex Workers*, 9 U. PA. J. LAB. & EMP. L. 679 (2007).

21. McKinstry, *supra* note 20, at 692; Chun, *supra* note 4 at 239-40.

22. McKinstry, *supra* note 20, at 692.

23. *Id.*

24. *Id.* at 692-93.

25. Hyde, *supra* note 8, at 385. These alternative models are what I refer to collectively as "margins-organizing."

Sex workers have also developed organizing strategies, but sex labor organizing is largely absent from the discussion surrounding new models of worker advocacy. The literature addressing sex work heretofore fails to locate sex worker action within a holistic model of improving work conditions through increased solidarity. For example, feminist and legalistic discussions surrounding the decriminalization of prostitution, as well as debates over whether and how to value sex work at all, are not viewed within the realm of labor organizing. Yet, when reconfigured under a margins-organizing labor lens, these two areas — decriminalization and work value — are critical aspects of sex labor organizing within the issue of workplace safety.

Sex labor is organized around many of the same workplace issues as other marginalized groups. Prostitutes seek the traditional benefits of occupational health and safety, control over their wages, and respect for the work they do. They fight to end discriminatory harassment and violence against those in their ranks, and they do so through traditional modes of organizing. Their efforts have led to real success despite the difficulties inherent to organizing a marginalized and illicit workforce.

Moreover, like other marginalized workers — especially immigrant laborers — prostitutes and other sex laborers face incredible stigma and discrimination, both for being who they are and for doing the work they do. Prostitution draws a high number of women, women of color, undocumented immigrants, and transgender/transsexual people.<sup>26</sup> In any other occupation, it would be clear that these are especially vulnerable workers who need support in their organizing efforts.

#### A. TIES THAT BIND: SIMILARITIES AMONG MARGINALIZED WORKERS

Because the issues that affect sex work are essentially labor issues common to all marginalized workers, it is instructive to look at sex workers' organizing efforts alongside organizing efforts by other minority groups. Two main groups frame the discussion around margins-organizing: immigrant day laborers and immigrant domestic workers. Once stripped down, it is apparent that sex workers' labor issues — and organizing efforts — are similar to those of both groups.

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26. Transgender sex workers present special issues that are beyond the scope of this Note, but should be addressed.

Transgender sex workers have all the concerns of their sex worker peers but also have other concerns, including additional risk of violence from clients and insensitivity or incomprehension on the part of medical providers. Additional legal complications may include ambiguous or outright illegal status for simply being transgender, apart from laws on sex work.

Melisa Ditmore, *Reaching Out to Sex Workers*, in REPRODUCTIVE HEALTH AND RIGHTS — REACHING THE HARDLY REACHED 19 (Elaine Murphy, ed., 2002) [hereinafter Ditmore, *Reaching Out*].

### 1. Common Threads: Sex and Day Labor

Sex labor organizing is at a distinct disadvantage as compared to immigrant day labor organizing because sex labor may be criminal in itself. In contrast to other occupations like construction worker, plumber, or maid, the occupational description for "prostitute" is found in the penal code.<sup>27</sup> Because their work is both criminalized and highly stigmatized, many prostitutes work alone in clandestine environments, alienated from sources of support and mainstream society.

However, even keeping the distinction of criminalization in mind, prostitutes face many of the same problems as other populations among the working poor and recent immigrants.<sup>28</sup> For example, many prostitutes have difficulty finding stable housing and are unable to earn a living wage in mainstream society.<sup>29</sup> Indeed, in the same way as many recent immigrants became day laborers,<sup>30</sup> most prostitutes entered their industry in times of financial difficulty.<sup>31</sup> Moreover, about three-fourths of the day labor workforce works without documentation,<sup>32</sup> which puts these workers in a legally and socially vulnerable position not unlike that of prostitutes.

Both prostitutes and day laborers face abuses from clients/employers, community vigilantes, and police. Prostitutes report being robbed, assaulted, and forced to do work they did not agree to do.<sup>33</sup> Some, especially street-based workers, are subject to frequent police harassment.<sup>34</sup> A high percentage of street prostitutes in New York report being unable to accomplish even non-criminal tasks like grocery shopping or riding public transportation without having law-enforcement-initiated interactions with the police.<sup>35</sup> The harassment may not end in arrest, but often includes citations such as obstructing traffic or loitering.<sup>36</sup>

Though indoor-based prostitutes face fewer run-ins with the police,<sup>37</sup>

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27. *E.g.*, CAL. PENAL CODE § 647(b), *supra* note 1.

28. JUHU THUKRAL, MELISSA DITMORE, & ALEXANDRA MURPHY, BEHIND CLOSED DOORS: AN ANALYSIS OF INDOOR SEX WORK IN NEW YORK CITY, 9 (2005), <http://www.sexworkersproject.org/downloads/BehindClosedDoors.pdf> (last visited Mar. 27, 2009) [hereinafter BEHIND CLOSED DOORS].

29. *Id.*

30. *See* ABEL VALENZUELA JR., ET AL., ON THE CORNER: DAY LABOR IN THE UNITED STATES 18 (2006), <http://www.uic.edu/cuppa/uicued/Publications/RECENT/onthecorner.pdf> (last visited Mar. 27, 2009).

31. *See* BEHIND CLOSED DOORS, *supra* note 28, at 33.

32. VALENZUELA, *supra* note 30, at 18.

33. *See generally* BEHIND CLOSED DOORS, *supra* note 28, at 50-52.

34. JUHU THUKRAL, MELISSA DITMORE, REVOLVING DOOR: AN ANALYSIS OF STREET-BASED PROSTITUTION IN NEW YORK CITY 6 (2003), <http://www.sexworkersproject.org/downloads/RevolvingDoor.pdf> (last visited Mar. 27, 2009) (Seventy percent of street-based workers described near daily contact from police officers not initiated by the worker.) [hereinafter REVOLVING DOOR].

35. *Id.*

36. *See* BEHIND CLOSED DOORS, *supra* note 28, at 44.

37. *See id.* at 45-46.



these workers are still extremely concerned about criminal justice contact.<sup>38</sup> They find police treatment during the arrest process highly disrespectful and sometimes dangerous.<sup>39</sup> Moreover, these workers fear the consequences of arrest, including the stigma of a criminal record, impact on housing and family, and possible immigration consequences such as deportation.<sup>40</sup>

Day laborers face similar issues when dealing with their employers and the police. Wage theft is the most common abuse day laborers experience.<sup>41</sup> Day laborers also endure employer insults and threats, violence, abandonment at the work site, and being forced to work longer than agreed to.<sup>42</sup> The police also harass these workers by arresting them while they search for work and by issuing citations at hiring sites.<sup>43</sup> Police officers also harass workers by checking immigration status or by forcing laborers to leave hiring sites.<sup>44</sup>

For these workers, like prostitutes, a change in legal classification would not entirely overcome obstacles to safe and fair working conditions. Their primary goal is "to connect with an employer, negotiate a fair wage, and receive payment" for services rendered.<sup>45</sup> Beyond these immediate needs, day laborers' interests may include improving language and negotiation skills, protecting their health and safety, and advancing their trade.<sup>46</sup> Similarly, sex workers' interests may include improving self-defense skills, protecting their reproductive health, and improving language skills.

For day laborers, like sex workers, only some small aspects of these interests may be met on the streets.<sup>47</sup> Their other interests remain unmet and are limited by the informal setting in which street-based workers solicit and negotiate their labor.<sup>48</sup> The question then, is how do these workers, whose only "collective action" may be gathering on the street in the same location, advance their interests? Because traditional industrial organizing is clearly not the answer, these street-based workers have organized alternative methods of collective action.

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38. BEHIND CLOSED DOORS, *supra* note 28, at 11.

39. *Id.* at 47.

40. *Id.*

41. VALENZUELA, *supra* note 30, at 14 ("Nearly half of all day laborers (forty-nine percent) have been completely denied payment for work they completed in the two months prior to being surveyed. Similarly, forty-eight percent have been underpaid by employers during the same time period.").

42. *See id.*

43. *See id.*

44. *Id.*

45. Gabriela Garcia Kornzweig, *Commercial Speech in the Street: Regulation of Day Labor Solicitation*, 9 S. CAL. INTERDISC. L.J. 499, 514 (2000).

46. *Id.*

47. *Id.*

48. *Id.*

## 2. Common Threads: Sex and Domestic Labor<sup>49</sup>

On the surface it may be difficult to see the parallels between sex workers' and domestic workers' experiences. However, by focusing less on superficial job tasks and more on underlying workplace issues, shared difficulties become quite apparent. For example, an overwhelming majority of domestic workers (such as housekeepers, nannies, etc.) and prostitutes are women, and a vast number are also minorities and immigrants.<sup>50</sup> Moreover, because their labor is often devalued, domestic workers, like sex workers, often find themselves devalued within their employment situations.<sup>51</sup> The degree of inequality between the employer and the domestic worker may be further intensified by racial, gender, and other types of prejudice.<sup>52</sup>

Disrespect toward domestic workers can escalate into different types of abuse. Verbal abuse, including insults and name-calling, is common.<sup>53</sup> Domestic workers are also subject to physical abuse, which may include slapping, kicking, hitting, shoving, assaults with weapons, and threats of physical harm.<sup>54</sup> Female domestic workers also experience sexual assaults and harassment.<sup>55</sup> This abuse is essentially unregulated and often remains unreported.<sup>56</sup>

Likewise, prostitution is dominated by women of color, immigrants, and transsexual or transgender women.<sup>57</sup> These workers are also commonly abused. They report being robbed, physically assaulted, and raped by their customers.<sup>58</sup> Like domestic worker abuse, crimes against prosti-

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49. Though beyond the scope of this Note, I acknowledge that many women are trafficked into the United States to perform both sex labor and domestic labor. This Note is more narrowly focused on those workers who were not trafficked into their field.

50. ANDOLAN ORGANIZING SOUTH ASIAN WORKERS ET AL., DOMESTIC WORKERS' RIGHTS IN THE UNITED STATES: A REPORT PREPARED FOR THE U.N. HUMAN RIGHTS COMMITTEE IN RESPONSE TO THE SECOND AND THIRD PERIODIC REPORT OF THE UNITED STATES 6 (2007), [http://www.globalrights.org/site/DocServer/Domestic\\_Workers\\_report\\_FINAL.pdf?docID=5503](http://www.globalrights.org/site/DocServer/Domestic_Workers_report_FINAL.pdf?docID=5503) (last visited Mar. 27, 2009) (citing BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, WOMEN IN THE LABOR FORCE: A DATABOOK, tbl. 14 (2005), <http://www.bls.gov/cps/wlf-table14-2005.pdf> (last visited Mar. 27, 2009)) [hereinafter, DOMESTIC WORKERS' RIGHTS].

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.* ("For example, Title VII, which prohibits discrimination in employment and sexual harassment in the workplace, applies only to employers with at least fifteen employees. Domestic workers, who are generally employed by someone with fewer than fifteen employees, therefore are usually not covered by Title VII.")

57. See REVOLVING DOOR, *supra* note 34, at 29; BEHIND CLOSED DOORS, *supra* note 28, at 30.

58. See BEHIND CLOSED DOORS, *supra* note 28, at 50-51; REVOLVING DOOR, *supra* note 34, at 44-46.

tutes often go unpunished.<sup>59</sup> Not only is such abuse essentially unregulated, workers may fear potential legal reprisals if they report the abuse to police. Prostitutes fear arrest<sup>60</sup> while undocumented domestic workers fear being reported to Immigration and Customs Enforcement and deported from the country.<sup>61</sup>

Domestic workers and prostitutes face similar barriers to organizing. The NLRA explicitly excludes domestic workers from its protection.<sup>62</sup> Like prostitutes, it is unlikely that massive change would follow even if domestic workers were suddenly brought within the reach of collective bargaining statutes<sup>63</sup> because service-based work simply does not fit within the usual model of industrial, worksite-specific organizing that is the backbone of U.S. collective bargaining.<sup>64</sup>

One fundamental issue is that many domestic workers and prostitutes do not maintain a common job site. Instead, they tend to act more like independent contractors, going from one client to the next.<sup>65</sup> Such worksite mobility is problematic within a traditional organizing model for two main reasons. First, traditional organization relies on a model which envisions multiple workers and a single employer, such that the employer and the bargaining unit are readily identifiable.<sup>66</sup> Thus, even if the NLRA did reach prostitutes and domestic workers, there would be problems in establishing the appropriate bargaining unit, much less the relevant employer.<sup>67</sup>

Second, traditional union organization is invested in an employer-specific model of organizing.<sup>68</sup> Mobile service workers present a real challenge to this model of organizing because they lack long-term attachments with a specific employer.<sup>69</sup> Moreover, domestic workers and prostitutes generally labor within the realm of personal service. That is, they work directly with clients or customers. Such personally tailored interactions tend to deter the development of an "us-them" feeling that is often prevalent in other workplaces and generally useful to organizing.<sup>70</sup>

Finally, the "us-them" dichotomy may be further eroded by placing the locus of work squarely within the private sphere of the employer. The very

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59. REVOLVING DOOR, *supra* note 34, at 8.

60. See BEHIND CLOSED DOORS, *supra* note 28, at 47.

61. DOMESTIC WORKERS' RIGHTS, *supra* note 50, at 9.

62. 29 U.S.C. §152(3); See Smith, *supra* note 7, at 62-68, for an analysis of why domestics were excluded.

63. Smith, *supra* note 7, at 68.

64. *Id.*

65. *Id.*

66. *Id.* at 71.

67. *Id.* at 70. Bargaining units are decided by the NLRB, which generally combines factors of geography with a "community of interests" standard to determine the appropriateness of a bargaining unit. *Id.*

68. *Id.* at 71.

69. *Id.*

70. See *id.* at 69.

personal nature of their work may tend to draw prostitutes' and domestic workers' focus away from core labor issues — such as wages and benefits, among others — and toward issues of service quality.<sup>71</sup> This is understandable when one considers that the client is also the final consumer of the product, and the work performed may entail considerable contact between the employee and employer — for example, domestic employees often have intimate knowledge of the employer's affairs.<sup>72</sup> Similarly, sexual preferences and desires are incredibly private matters, and prostitutes become privy to those secrets. Such intimacy creates a deeply complicated employer-employee relationship that defies a simple "us-them" dichotomy.

Domestics and other low-wage service workers have responded to the difficulties of traditional organizing with several creative strategies that accommodate alternative work arrangements and improve the economic position of low-wage service workers.<sup>73</sup> Their strategies encompass both union and non-union structures but include organizing outside of the NLRA framework, community-based organizing, central labor councils, employee caucuses, and worker cooperatives.<sup>74</sup>

#### B. MARGINS-ORGANIZING: ENVISIONING A NEW LENS

Immigrant day laborers and immigrant domestic workers — and their organizing strategies — have garnered attention and frame the discussion around margins-organizing. Generally, analysis of day laborers' organizing has focused on the emergence and proliferation of worker centers,<sup>75</sup> while analysis of domestic workers' organizing has centered on the use of an occupational-cooperative model.<sup>76</sup>

Three fundamental elements explain willingness to participate in social movements: 1) perceived injustices; 2) perceived efficacy of group action; and 3) identity around which a group can form.<sup>77</sup> The final element is the point where alternative worker organizations gain a real advantage in attracting members. Because worker centers and other alternative organizations are able to organize on a broader identity basis than merely "employee," they may find it easier than the modern union to induce participation in collective action.<sup>78</sup>

For example, in contrast to unions, which run up against workers' rejection of identities such as "working class" or "union," worker centers are able to rely upon and grow out of identities such as "immigrant," "domestic

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71. Smith, *supra* note 7.

72. *Id.* at 69.

73. *Id.* at 71.

74. *Id.* at 72.

75. See discussion of worker centers, *infra* Section III.B.2.

76. See discussion of occupational-cooperatives *infra* Section III.B.1.

77. Hyde, *supra* note 8, at 411; Bert Klandermans, *How Group Identification Helps to Overcome the Dilemma of Collective Action*, 45 AM. BEHAV. SCIENTIST 887, 888 (2002).

78. Hyde, *supra* note 8, at 411.

worker,"<sup>79</sup> or even, as this Note argues, "whore."<sup>80</sup> Moreover, by adopting a broader social justice approach to labor organizing, worker centers may appeal to social groups on an idealistic or visionary level. Such idealistic appeals help construct a collective identity more readily and powerfully than appeals based on economic interest.<sup>81</sup>

### 1. Identity Organizing and the Occupational Union Model

Occupational unionism unites workers across occupational identity or trade, instead of by worksite. Occupational unionism is not a new method for organizing. Before the passage of the NLRA, and the worksite-based organizing that came with it, virtually all successfully organized trades relied upon some form of occupational unionism.<sup>82</sup> Occupational unionism focuses less on issues of tenure with a specific employer and instead emphasizes maintaining and even increasing the overall supply of good jobs and providing workers with the skills to do those jobs.<sup>83</sup>

#### a. Occupational Unionism: A Rough Sketch

Occupational unions flourished at a time when the labor market was populated by numerous small businesses, because they met the needs of workers and employers outside of the mass-production setting.<sup>84</sup> Marginalized workers stand to benefit from drawing on the model of occupational unionism, because the focus is geared less toward the worksite and more toward a broader worker identity. As such, it may appeal to labor groups who identify along ethnicity or other cultural lines as well as occupation.

Two salient features of occupational unionism are highly applicable to representing marginalized, private-sphere workers: worker-run employment agencies and peer management techniques.<sup>85</sup> The worker-run employment agency, or hiring hall, is an employment referral system that serves as a clearinghouse for jobs and also brings together potential employers and employees.<sup>86</sup> Unlike employment agencies, which may charge

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79. Hyde, *supra* note 8, at 411.

80. For an argument that "immigrant" is not — at least initially and without deliberate work to foster it — a unifying identity, see JENNIFER GORDON, *SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS* 156-65 (2005). Most immigrants she worked with identified with their original nationality and social class, and thus tended to divide themselves from other immigrants.

81. Hyde, *supra* note 8, at 411.

82. Dorothy Sue Cobble & Leah F. Vosko, *Historical Perspectives of Representing Nonstandard Workers*, in *NONSTANDARD WORK: THE NATURE AND CHALLENGES OF CHANGING EMPLOYMENT ARRANGEMENTS* 291, 294 (Francoise Carre, et al. eds., 2000) [hereinafter Cobble, *Nonstandard Workers*].

83. *See id.* at 295.

84. *Id.*

85. Smith, *supra* note 7, at 81 (drawing upon and applying Cobble's definition of occupational unionism).

86. *See id.* at 81-82. (noting some courts have declared aspects of traditional hiring halls to be violative of the NLRA, but core aspects of the scheme remain viable).

astronomical fees, many union-operated hiring halls provide the service for free.<sup>87</sup> The union hiring hall model has been readily adapted and modified by worker-run employment centers and cooperatives across the country to organize for better wages and benefits.<sup>88</sup>

Peer management techniques stress worker responsibility and control over development, maintenance, and enforcement of occupational standards.<sup>89</sup> A major component of peer management is providing opportunities for workers to acquire various skills through job training.<sup>90</sup> Peer management also allows for and encourages worker-member participation and accountability in the growth of one's own occupational movement.

b. Occupational Organizing and the Worker Cooperative

Domestic workers have used a worker cooperative model that incorporates certain elements associated with occupational unionism. Though cooperatives vary according to the particular perspective of each organization, worker-run domestic service cooperatives share many common features. Most involve a loose-knit association of workers and function as employment agencies by providing their members access to a pool of jobs without having to pass on a significant percentage of salary to an intermediary.<sup>91</sup> As for services, domestic cooperatives maintain a fairly narrow focus on housekeeping, excluding childcare services.<sup>92</sup> They are often located in church basements or community centers, and they attract employers via aggressive outreach and advertising.<sup>93</sup> Members rotate staffing and usually pay dues to cover administrative costs, and jobs are typically assigned by a mutually agreed upon system.<sup>94</sup>

Domestic cooperatives push to redefine their work as skilled and socially valuable.<sup>95</sup> Among paid household workers there is a real struggle to resist the image of domestic service as a form of servile, unskilled, menial labor that any woman can innately perform.<sup>96</sup> In combating that image, two important and central themes of domestic worker organizing efforts have been respect and dignity for workers.<sup>97</sup> In the context of home-

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87. Smith, *supra* note 7, at 82. See also Dorothy Sue Cobble, *Organizing the Postindustrial Workforce: Lessons From the History of Waitress Unionism*, 44 INDUS. & LAB. REL. REV. 419, 423-24 (1991) [hereinafter, Cobble, *Waitress Unionism*].

88. Smith, *supra* note 7, at 82.

89. *Id.* See also Cobble, *Nonstandard Workers*, *supra* note 82, at 295.

90. Smith, *supra* note 7, at 82. "Union-sponsored waitress hiring halls, for example, operated apprenticeship programs for inexperienced waitresses that combined classroom experience and on-the-job training." *Id.* at 82-83. See also Cobble, *Waitress Unionism*, *supra* note 87, at 423-29.

91. Smith, *supra* note 7, at 86.

92. *Id.*

93. See *id.* at 86-87.

94. *Id.* at 86.

95. *Id.* at 88.

96. *Id.*

97. *Id.* at 89.

service work, and because of the intense one-on-one nature of the work relationship within the private sphere, it is all too easy for employers to ignore the interests of workers as employees.<sup>98</sup> Moreover, many domestic workers internalize the devalued nature of their work, and so have been willing to "do anything to keep [their] job[s]."<sup>99</sup>

The cooperative structure gives workers a framework for collective resistance in the face of intolerable or unrealistic demands and pulls the worker out of the direct line of an often-abusive negotiation process.<sup>100</sup> She no longer has to go it alone. Because domestic workers usually are in vulnerable economic and legal (immigration) positions, employers may easily coerce them into unfavorable terms when they bargain.<sup>101</sup> The cooperative provides a mechanism for the initial negotiation, and if customers feel the need to complain later they can complain to the cooperative rather than take it out on the individual.<sup>102</sup>

## 2. Worker Centers

Immigrant worker centers are a central feature of day laborer organizing. Though difficult to categorize, most immigrant worker centers share some features of earlier U.S. civic institutions such as fraternal organizations, settlement houses, local civil rights organizations, and unions.<sup>103</sup> Generally, and as is common to most modern alternative worker organizations, worker centers identify with social movement traditions and draw upon community organizing strategies.<sup>104</sup>

Immigrant worker centers have been on the rise in the United States for the past decade. In 1992 there were fewer than five centers nationwide, but by 2005 there were 139 worker centers in greater than eighty cities, towns, and rural areas of the United States.<sup>105</sup> Not surprisingly, this trend directly parallels the decline of labor unions and increased flow of immigrant groups into the U.S.<sup>106</sup> For one, many low-wage immigrants work in industries where union decline has been so dramatic that unions are nearly non-existent.<sup>107</sup> Moreover, many of the institutions, civic groups, and labor

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98. Smith, *supra* note 7, at 89.

99. *Id.*

100. *See id.* at 89-90.

101. *See id.* at 90. *See also* Scott L. Cummings, *Developing Cooperatives as a Job Creation Strategy for Low Income Workers*, 25 N.Y.U. REV. L. & SOC. CHANGE 181, 194 (1999) ("It often happened that clients would take advantage of a worker's vulnerable legal and economic status by refusing to pay for services rendered.").

102. *See* Smith, *supra* note 7, at 90.

103. Janice Fine, *Worker Centers: Organizing Communities at the Edge of the Dream*, 50 N.Y.L. SCH. L. REV. 417, 420 (2005-06).

104. *Id.* *See generally* Hyde, *supra* note 8, at 410-11.

105. Fine, *supra* note 103, at 421.

106. *Id.*

107. *See id.* at 418.

organizations that used to help immigrants have disappeared.<sup>108</sup> In contrast to earlier periods in U.S. history, contemporary immigrant workers simply have fewer prospects for participation in the workplace and fewer opportunities to integrate into American community life, society, and politics.<sup>109</sup>

Worker centers fill this void by offering an organized manner for individuals to interact with each other.<sup>110</sup> While the street is usually a melee where the fastest, strongest, or most influential individuals get to negotiate before others, worker centers offer street-based workers an opportunity to organize collectively for the good of the group.<sup>111</sup> Through worker centers and collective action, immigrant day laborers have been able to develop and enforce minimum wage laws and standard working condition requirements.<sup>112</sup>

Though worker centers vary widely in terms of their programs and particular emphases, most employ a combination of approaches, including service delivery, advocacy, and organizing. Service delivery runs the gambit, from legal assistance with wage and hour claims to providing laminated photo identification.<sup>113</sup> Such work may include “legal representation to recover unpaid wages, English classes, worker rights education, and access to health clinics, bank accounts, and loans.”<sup>114</sup> However, most centers agree that long-term change will come only through organizing.<sup>115</sup>

Organizing may include “building ongoing organizations and engaging in leadership development” to encourage “workers to take action on their own behalf for economic and political change.”<sup>116</sup> Advocacy may include “researching and releasing exposés about conditions in low-wage industries, lobbying for new laws and changes in existing ones, working with government agencies to improve monitoring and grievance processes, and bringing suits against employers.”<sup>117</sup> In the context of immigrant day labor centers, advocacy and organizing in the worker center spectrum primarily revolves around creative and direct action targeted to individuals and institutions at key points of leverage: 1) wages and conditions; 2) attacks on immigrants; and 3) immigrant political incorporation, on issues such as education, housing, healthcare, and discrimination.<sup>118</sup>

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108. Fine, *supra* note 103, at 418.

109. *Id.*

110. Kornzweig, *supra* note 45, at 514.

111. *Id.*

112. *Id.* at 514-15; see also GORDON, *supra* note 80.

113. Fine, *supra* note 103, at 432.

114. *Id.* at 420.

115. See *id.* at 432.

116. *Id.* at 420.

117. *Id.*

118. *Id.* at 433.



#### IV. A SINGLE LENS: BRINGING TWO VIEWPOINTS TOGETHER

Taken together, these two overarching approaches to organizing — occupational organizing and the day laborer worker center model — present a holistic framework in which to view margins-organizing.

##### A. A HOLISTIC FRAMEWORK

A holistic framework of margins-organizing may be described as follows: Margins-organizing is largely rooted in a community or socio-personal identity. While this identity may be rooted in an actual occupation, it appears that a cultural identity is paramount.<sup>119</sup> Solidarity along socio-personal lines as opposed to workplace identity makes sense in margins-organizing, as a majority of the workers in marginalized occupations such as those discussed here ultimately want to exit.<sup>120</sup> By contrast, the traditional union model envisions long-term employment that is structured along lines of seniority.

Once a unifying identity is established, margins-organizing moves into service delivery and political advocacy. Both of these ends are effectuated through peer outreach and organizing. Margins-organizing seeks to protect the safety of these vulnerable workers by providing some type of employment support service — whether an actual hiring hall/agency as in the cooperative model, an employment clearinghouse, or an organized hiring site. Finally, margins-organizing is solidly entrenched in service delivery. Here, legal aid is often a critical part of the structure. Other services may include résumé advice, health care, and language self-improvement classes.

##### B. POTENTIAL PROBLEMS

While it is too soon to tell where success and failure may lie, margins-organizing may face some substantial obstacles. One shared aspect among these groups is the great likelihood of being “undercut” by unorganized workers in their respective fields. All three of these work areas are often deemed “unskilled,” and there is a large supply of potential replacement workers. Such workers may be willing to work under worse conditions than the organized worker. When workers can easily bypass the cooperative or worker center to negotiate jobs on their own terms, they may undermine the standards set up by the organized group. Finally, some organizations may require a financial investment from members. However,

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119. By “cultural,” I am not necessarily referring to ethnicity or national culture. Rather I am speaking in broader terms that may include, for example, sub-group cultures such as “whore,” “artist,” or “immigrant.”

120. VALENZUELA, *supra* note 30, at 20 (“The overwhelming majority of day laborers (eighty-six percent) are seeking regular, permanent employment.”); *see also* BEHIND CLOSED DOORS, *supra* note 28, at 61 (“When asked if they would like to leave sex work eventually, sixty-nine percent said ‘yes.’”).

workers might think this investment is unnecessary if they feel they can secure more jobs on their own; this is especially true if the worker is less concerned about quality of work conditions than quantity of jobs.<sup>121</sup>

## V. SEX LABOR ORGANIZING AS PART OF MARGINS-ORGANIZING

The commercial sex industry is a very broad field. Even within the realm of prostitution, the specific issues, and thus the most effective methods of organizing, vary by the type of sex work. Consider the differences that arise due to location choice alone. While street- and indoor-based prostitutes share many issues in common,<sup>122</sup> practical organizing tactics must vary between the groups. An indoor-based prostitute may very well benefit from the use of an occupational-cooperative structure.<sup>123</sup> But such a model is not necessarily realistic for the street-based prostitute who may benefit more from a structure like that of a worker center. Thus, even though both groups of workers may be looking toward the same policy and advocacy goals, the structures that best meet those goals necessarily vary.

Because of the criminalized status of their work, sex labor organizers are focused less on direct job procurement. While immigrant laborers attach services, organizing, and advocacy to their hiring centers and cooperatives, sex laborers create structures that revolve around service delivery, organizing, and advocacy — essentially, the worker center without the hiring hall aspect. Sex laborers have established clinics and advocacy sites, and advocates and organizers do a great deal of their work online.<sup>124</sup> Even so, sex laborer organizing is not inherently different from any other margins-organizing. It is still rooted in peer-outreach and organizing, political advocacy, service delivery, and employment services.

### A. PEER-OUTREACH AND ORGANIZING

Like immigrant-labor groups, sex labor activists and groups are focused on outreach and organizing around issues that affect sex workers. Indeed, outspoken worker-led advocacy groups have been on the scene since the 1970s. COYOTE (Call Off Your Old Tired Ethics), founded in

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121. See Smith, *supra* note 7, at 91.

122. For example, some issues include fear of arrest, violence, and robbery from clients, and reproductive health concerns.

123. See generally McKinstry, *supra* note 20. That Note puts forth a model for sex worker cooperatives. At least one group of Canadian sex workers has begun to develop a cooperative in Vancouver, B.C. Stephanie Levitz, *Sex Workers Look Into Launching Co-Op*, GLOBE AND MAIL, Mar. 24, 2007, at A13. For a more complete discussion about the cooperative, see Trina Rickets (A.K.A. Annie Temple), *Canada's First Sex Worker Cooperative: Working Toward a Safer Industry*, 4 SPREAD 43 (Summer 2008).

124. See, e.g., Prostitutes' Education Network, <http://www.bayswan.org> (last visited Mar. 27, 2009); International Sex Worker Foundation for Art, Culture and Education, <http://www.iswface.org> (last visited Mar. 27, 2009); Sex Workers Outreach Project-USA, <http://www.swopusa.org> (last visited Mar. 27, 2009).

1973, "supports programs to assist sex workers in their choice to change their occupation, works to prevent the scapegoating of sex workers for AIDS and other STDs, and to educate sex workers, their clients and the general public about safe sex."<sup>125</sup> In 1999, COYOTE founded The St. James Infirmary, a peer-based Occupational Safety & Health Clinic for sex workers.<sup>126</sup>

### 1. Occupational Health and Safety

Occupational health and safety is the major organizing point for prostitutes and other sex labor activists. HIV/AIDS and STD prevention and education are central to sex labor organizing.<sup>127</sup> Indeed, in the late 1980s, COYOTE responded to the needs of sex labor in the AIDS crisis by shifting its focus from legalizing commercial sex work to providing safer sex education programming to sex laborers and to clients.<sup>128</sup> Since then, sex labor activists have organized around this issue to the point where sex workers' active participation in research and studies in the health field is widely recognized as necessary to those studies' success.<sup>129</sup>

Sex workers also organize around other aspects of occupational safety. Not surprisingly, sex work can be a very dangerous job. As part of studies on street-based and indoor-based prostitutes in New York, workers were asked questions related to safety on the job. Workers in both studies reported being raped, beaten, and robbed by customers.<sup>130</sup> Unfortunately, such crimes against prostitutes usually go unpunished.<sup>131</sup> Most prostitutes are unwilling to report such incidents to the police, even when they want to,

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125. Call Off Your Old Tired Ethics (COYOTE), <http://www.bayswan.org/COYOTE.html> (last visited Mar. 27, 2009).

126. St. James Infirmary, History, [http://www.stjamesinfirmary.org/?page\\_id=3](http://www.stjamesinfirmary.org/?page_id=3) (last visited Mar. 27, 2009) (Explaining that the St. James Infirmary, located in San Francisco, was initially a joint project between EDA (Exotic Dancers Alliance) and the STD Prevention and Control Services of the City and County of San Francisco Department of Public Health, and is now a non-profit.).

127. This is an area where day laborers could benefit from sex labor organizing. A recent study of male day laborers in Los Angeles revealed an increase in HIV/AIDS rates of those workers, possibly due to increased involvement in sex labor and other behaviors. See SAMANTHA ERLICH, MAYA THOLANDI & SERGIO MARTINEZ, CAL. DEPT. OF HEALTH SERVICES, OFFICE OF AIDS HIV/AIDS EPIDEMIOLOGY BRANCH, HIV RISK ASSESSMENT OF MIGRANT LATINO DAY LABORERS 10, 14-15 (2006), <http://www.cdph.ca.gov/programs/aids/Documents/RPT2006-04-2679HIVRiskAssessMigrantLatinos.pdf> (last visited Mar. 27 2009).

128. Sylvia Law, *Commercial Sex: Beyond Decriminalization*, 73 S. CAL. L. REV. 523, 552 (2000).

129. Elaine Murphy & Karin Ringheim, *An Interview With Jo Doezeema of the Network of Sex Work Projects: Does Attention to Trafficking Adversely Affect Sex Workers' Rights?*, in Ditmore, *Reaching Out*, *supra* note 26, at 15.

130. See BEHIND CLOSED DOORS, *supra* note 28, at 50-51; REVOLVING DOOR, *supra* note 34, at 44-46.

131. REVOLVING DOOR, *supra* note 34, at 8.

because they find the police neither helpful nor trustworthy.<sup>132</sup> Some prostitutes reported that their complaints were not accepted, and they were told they “deserve all they get.”<sup>133</sup> Moreover, fear of arrest not only prevents many prostitutes from reporting violent incidents, but also pushes them into even more clandestine, marginalized situations.<sup>134</sup>

It is apparent, then, that organizing around decriminalization is part of organizing for better occupational health and safety. Decriminalizing sex work relates directly to workers’ autonomy and ability to organize effectively.<sup>135</sup> Organized workers can better protect themselves from abuses, insist on safer sex from clients, and call on police in instances of abuse.<sup>136</sup> Indeed, studies demonstrate that where prostitution is legal, rates of HIV transmission are lower than where prostitution is illegal.<sup>137</sup>

## B. ADVOCACY

As with domestic and day laborers, sex laborers are organized around advocacy that will reduce harm to their ranks and increase their political power.

### 1. Political and Legislative

Though decriminalization is the major focus for most advocacy groups,<sup>138</sup> advocacy groups also push back against coercive police action, calling for “formulation of legislation that protects, rather than prosecutes, sex workers.”<sup>139</sup> For example, PONY (Prostitutes of New York), specifically “calls for an end to illegal police activity — such as street sweeps — in the enforcement of existing laws.”<sup>140</sup> Based on findings in its 2005 study on prostitution and advocacy, the Urban Justice Center recommends that “policy makers should carefully consider the extent to which they make prostitution a criminal justice priority.”<sup>141</sup> Similarly, after its com-

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132. BEHIND CLOSED DOORS, *supra* note 28, at 12.

133. REVOLVING DOOR, *supra* note 34, at 8.

134. BEHIND CLOSED DOORS, *supra* note 28, at 68.

135. Ditmore, *Reaching Out*, *supra* note 26, at 23.

136. *Id.*

137. *Id.* at 22.

138. See, e.g., Prostitutes of New York, <http://www.bayswan.org/PONY.html> (last visited Mar. 27, 2009) (“PONY advocates the decriminalization of prostitution”); Sex Workers Outreach Project About US, <http://www.swopusa.org/node/25> (last visited Mar. 27, 2009) (“[W]e address locally and nationally the violence that sex workers experience because of their criminal status.”); St. James Infirmary, [http://stjamesinfirmary.org/?page\\_id=4](http://stjamesinfirmary.org/?page_id=4) (last visited Mar. 27, 2009) (“The St. James Infirmary is fundamentally against the criminalizing of sex workers for their profession.”).

139. Ditmore, *Reaching Out*, *supra* note 26, at 23.

140. Prostitutes of New York, *supra* note 138.

141. BEHIND CLOSED DOORS, *supra* note 28, at 78. The Urban Justice Center’s Sex Worker Project “focus[es] on the provision of legal services, legal training, documentation, and policy advocacy for sex workers.” Urban Justice Center Projects, <http://www.urbanjustice.org/ujc/projects/sex.html> (last visited Mar. 27, 2009).

parative study of laws in San Francisco and other cities, the San Francisco Task Force on Prostitution advised that City departments stop enforcing and prosecuting prostitution crimes, and instead redirect funds from prosecution, public defense, court time, legal system overhead, and incarceration towards services and alternatives for needy constituencies.<sup>142</sup>

## 2. In the Community

Sex labor advocacy is also focused on public education and information sharing. The Urban Justice Center study noted "fact-based public discussion and further inquiry [is needed] to erase the idea that prostitution is merely a criminal justice issue."<sup>143</sup> Through websites, several groups attempt to reach out to the community at large. Some have web pages that are geared specifically toward students' research papers.<sup>144</sup> Most sex worker advocacy websites have links to articles, news, and literature about sex work. But at least one maintains a comprehensive and highly organized database of informative material, including articles, power point presentations, and news clippings.<sup>145</sup>

## C. SERVICE DELIVERY

Sex labor organizing is not limited to HIV/AIDS and STD education and other health and safety concerns. Like other margins-organized groups, sex worker centers provide a range of services, including legal services, counseling, holistic body services, and employment support services. For example, the St. James Infirmary provides "energy and massage based body work," hosts support groups for male and transgender sex workers, and conducts harm reduction workshops.<sup>146</sup> Another example is Project SAFE, an outreach organization in Philadelphia. Project SAFE coordinates several services via telephone, including "referrals and support for women seeking housing, shelter, medical care, public assistance, drug treatment, mental health care, and legal aid."<sup>147</sup>

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142. The San Francisco Task Force on Prostitution, <http://www.bayswan.org/SFTFP.html> (last visited Mar. 7, 2008). The San Francisco Task Force on Prostitution was established by the San Francisco Board of Supervisors and included "representatives from The Mayor's Office, neighborhood groups, law enforcement agencies, public health agencies, social service agencies, City Departments and Commissions, women's rights advocates and immigrant and prostitute rights groups."

143. BEHIND CLOSED DOORS, *supra* note 28, at 78.

144. See the International Sex Worker Foundation for Art, Culture and Education, Student Center, <http://www.iswface.org/studentinfo.htm> (last visited Mar. 27, 2009); See also the Bay Area Sex Worker Advocacy (BAYSWAN), Prostitution Issues: Student Homepage, <http://www.bayswan.org/student.html> (last visited Mar. 27, 2009).

145. See International Sex Worker Foundation for Art, Culture and Education, Articles, <http://www.iswface.org/articles1.html> (last visited Mar. 27, 2009).

146. St. James Infirmary, Clinic Calendar, [http://stjamesinfirmary.org/?page\\_id=31](http://stjamesinfirmary.org/?page_id=31) (last visited Mar. 27, 2000).

147. Project SAFE, <http://www.safephila.org/history.htm> (last visited Mar. 27, 2009).

## 1. Legal Services

Sex labor advocates and organizers universally call for greater availability of legal services for sex laborers. Sex laborers report that they need legal assistance in many areas, including “criminal, immigration, housing, domestic violence, family law, [and] child welfare issues.”<sup>148</sup> It is unclear just how much sex worker groups are able to provide such organized services for workers, but at least one center, the Sex Workers Project of the Urban Justice Center in New York, provides direct legal services to sex workers.<sup>149</sup> Others have networks for connecting sex workers with legal assistance. For example, while PONY cannot provide free legal services, its “members share information about competent, trustworthy and ethical lawyers who understand the special concerns of sex workers.”<sup>150</sup>

This is an area where law students and lawyers could really make a difference in the lives of sex workers, by volunteering their legal knowledge to sex workers in need. Given that so many sex workers enter the profession with the goal of exiting, it makes sense to provide holistic legal services aimed at helping workers exit, as well as providing healthy choices for remaining in the profession. Students and practitioners should also consider working with and through existing sex worker organizations, such as the St. James Infirmary, to provide workshops on aspects of law that are of interest to sex workers. Topics might include: immigration rights, youth rights *vis a vis* their legal guardians, housing law, and law related to gender changes on identification for transgender people. Certainly, discussion with sex workers would yield a plethora of interests around which practitioners could build a workshop. Workshops should be designed to help sex workers help themselves and their communities.

## 2. Employment Support Services

While sex worker centers cannot legally run hiring services, they do provide employment support to sex workers. For example, the St. James Infirmary currently offers group series that are geared toward harm reduction and other aspects of sex work.<sup>151</sup> As of March 2008, the series included “Negotiating Sex w/Clients & Partners,” “Get Your Kicks Safely,” and “Sexually Transmitted Infections & Viruses.”<sup>152</sup> Similarly, Project SAFE provides information to workers about “bad dates,” which “lists brief descriptions of men who have attacked and/or raped women while they

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148. BEHIND CLOSED DOORS, *supra* note 28, at 59.

149. The Sex Workers Project: About the Sex Workers Project, <http://www.sexworkerproject.org/info> (last visited Mar. 27, 2009) (“The SWP offers legal services to individual sex workers, and also goes on outreach to find sex workers where they are most comfortable and advise them of their legal rights.”).

150. Prostitutes of New York, *supra* note 138.

151. St. James Infirmary, Clinic Calendar, *supra* note 146.

152. *Id.*

were working.”<sup>153</sup> Both of these centers provide safer sex supplies, such as condoms and dental dams.<sup>154</sup> These services are critical to the ongoing maintenance of sex workers' health and safety on the job, and further help them maintain healthy relationships on and off the job.

## VI. CONCLUSION

Whatever one's feeling about sex work, people are going to continue to engage in the sex field and continue to organize for their basic human rights as laborers. Prostitutes are an incredibly vulnerable group of workers. In any other occupation, it would be clear that these highly disenfranchised workers need support for their organizing efforts. But not only are sex laborers' efforts under-supported, they are largely ignored because the work itself is devalued or deemed immoral by society.

However, it is clear that once the actual job tasks are stripped away, prostitutes are grappling with many of the core labor issues common to other margins-organized labor groups. Indeed, it seems the main difference between the groups is not the tasks, but the criminalized nature of prostitution as contrasted with other marginalized labor. These groups organize and advocate in much the same way and toward the same goals: better occupational health and safety, better work conditions and treatment, a greater understanding and support from the community, and a stronger legal position to gain more protection from discrimination and violence. The only real difference is that sex workers cannot have the same access to legal hiring sites. Yet, they have made up for that by engaging in outreach via clinics and on the Internet.

Lawyers and activists have an important role to play as these workers continue to unite. Workers' issues are legal issues. That is doubly so for sex workers who, in order to get legal labor and employment protection, must first get protection from the criminal law. Having looked at sex labor organizing through a margins-organizing labor lens, we can truly appreciate sex laborers' organizing efforts, and finally start to answer the question, “What can *we* do for *you*?”

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153. Project SAFE, <http://www.safephila.org/services.htm> (last visited Mar. 29, 2009).

154. *See id.*; St. James Infirmary, Clinic Calendar, *supra* note 146.